

No. 84-435

Office - Supreme Court, U.S.
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ALEXANDER L. STEWART
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ROBERT RUSSELL,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court of
Appeals For The Seventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED, September 17, 1984
PETITION FOR CERTIORARI ALLOWED, February 19, 1985

26 P/2

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(Relevant) DOCKET ENTRIES

CR-83-00114-01

US-V-RUSSELL

- 8 Filed indictment (Dkt'd 03/14/83).
- 17 Motion to dismiss filed (MOT#1) (Count 1) (Dkt'd 04/15/83).
- 17 Memorandum in support of motion to dismiss (MOT#1) 4/15/83).
- 04/25/83 20 Motion to dismiss denied (MOT#1) (DRAFT) (JUDGE GETZENDAN-
NER) (Dkt'd 04/28/83).
- 05/31/83 28 Trial begins-bench (Count 1) (Dkt'd
06/06/83)
- 28 Motion made in open court to dismiss
(MOT#4) 1)
- 28 Motion to dismiss denied (MOT#4)
(Dkt'd 06/06/83).
- 08/23/83 35 Sentencing of defendant (Count 1) (The
court adjudged the defendant guilty as
charged and convicted and ordered
that: the defendant is hereby com-
mitted to the custody of the Attorney
General or his authorized representa-
tive for imprisonment for a period of
TEN(10) YEARS on count 1 of the
indictment. The court revokes defend-
ant's bond pending appeal).
- 36 Filed notice of appeal (Count 1)
(AAPL#1)
- 9/8/83 40 Filed 9/8/83 Transcript of proceedings
had on 8/23/83.

A-2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Docketed
Mar 14 1983

UNITED STATES OF AMERICA

vs.

ROBERT RUSSELL

No. 83 CR 114

Violation: Title 18, United
States Code, Section 844(i)

The FEBRUARY 1983 GRAND JURY charges:

On or about February 7, 1983 through February 10, 1983,
at Chicago, Illinois and elsewhere in the Northern District of
Illinois, Eastern Division,

ROBERT RUSSELL,

defendant herein, did maliciously attempt to damage and
destroy a two-unit apartment building, commonly known as
4530 South Union, Chicago, Illinois, which was used in the
activity affecting interstate commerce, by means of fire and by
means of explosive, as that term is defined in 18 U.S.C.
§ 844(j);

In violation of Title 18, United States Code, Section
844(i).

A TRUE BILL:

/s/ Melvin H. Redmand
FOREPERSON

/s/ Dan Webb
UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

ROBERT RUSSELL,
Defendant.

No. 83 CR 114

**MOTION OF DEFENDANT TO
DISMISS THE INDICTMENT AND
MEMORANDUM OF LAW IN SUPPORT THEREOF**

Now comes the defendant, Robert Russell, and moves the complaint be dismissed for lack of federal jurisdiction, and states:

1. He is charged with maliciously attempting "to damage and destroy a two unit *apartment building* . . . which was used in an activity affecting interstate commerce, by means of an explosive" as defined in 18 U.S.C. 844(j), and fire, in violation of 18 U.S.C. 844(i). (Emphasis added).

2. At the preliminary hearing, it was established that the building in question was a two-flat apartment building; one flat was occupied as a residence and one flat was empty; there was no commercial activity on the premises.

3. It was further alleged by the prosecutor that the government proposed to establish the "interstate commerce" jurisdictional nexus of the charge by proof that gas which travelled in interstate commerce was used to heat the building. No other interstate nexus was suggested.

4. Where the property involved is, as here, not *commercial* property, and there is no business, legitimate or otherwise,

being conducted from the premises, such building is not capable of being the subject of an offense under 18 U.S.C. 844(i), which, per the authorities cited in the attached Memorandum, does not apply to purely residential property.

5. In support hereof, defendant submits the attached Memorandum of Law.

WHEREFORE, defendant moves that the indictment be dismissed.

Respectfully submitted,

JULIUS LUCIUS ECHELES
35 East Wacker Drive
Chicago, Illinois 60601
Attorney for Defendant.

MEMORANDUM OF LAW

The Congressional committee in describing "business property" referred to "[T]he type of conduct punished by the statute [18 U.S.C. 844(i)], namely, the damage or destruction by explosion of business property *used* in interstate or foreign commerce or in an activity affecting such commerce, not to dwelling houses which were not being used for any commercial purpose at all." *United States v. Mennuti*, 639 F.2d 107, 111-12 (2 Cir. 1981). (Emphasis added).

Directly on point, *Mennuti* affirmed the District Court's dismissal of the indictment where, as here, the alleged target of the explosives was a *residential*, not a *commercial*, building. Accord, *United States v. Monholland*, 607 F.2d 1311 (10 Cir. 1979) (statute held not to apply to destruction of truck used by State judge traveling to and from work, though truck used fuel from interstate commerce, was insured by an interstate business, etc.)

All those cases finding the statute applicable involve *commercial* property, without exception. And no case was discovered wherein purely residential property, as here, was deemed subject to the statute.

Several Second Circuit cases decided subsequent to *Mennuti* expressly have reaffirmed that decision, finding federal jurisdiction on their respective facts where *commercial* property was involved. In *United States v. Barton*, 647 F.2d 224 (2 Cir. 1981), decided a few months after *Mennuti*, the reviewing court found that the buildings in question (which housed gambling operations):

"... were used in activities affecting interstate commerce within the meaning of § 844(i). There was ample evidence that *the buildings were used for commercial activities*." 647 F.2d at 232. (Emphasis added).

The Court noted:

"This [*i.e.*, that the buildings were used for commercial activities] distinguishes our recent decision in . . . [*Mennuti*], in which we held that § 844(i) does not apply to private dwellings, notwithstanding several interstate contacts involving financing, insurance, fueling, and use of building materials." *Id.* fn. 8.

And in *United States v. Giordano*, 693 F.2d 245 (2 Cir. 1982), decided this past November, the Court held a piano store fell within the ambit of the statute. Specifically holding that this decision was consistent with *Mennuti*, the Court stated:

"*Mennuti* held that only commercial enterprises are covered by the statute; there is no claim here [*i.e.*, in *Giordano*] that defendants conspired to destroy a residential building, as in *Mennuti*." 693 F.2d at 250.

In *United States v. Andrini*, 685 F.2d 1094 (9th Cir. 1982), the property held to be subject to the statute was a commercial building under construction. In the course of its opinion, the Court stated:

"We have discovered only two cases in which circuit courts have not found § 844(i) jurisdiction, neither of which involved *commercial* property." [Citing *Mennuti* and *Monholland, supra.*] *Id.* at 1096. (Emphasis in original.)

Each of the cases finding federal jurisdiction under the statute involves property which was used commercially. See, *e.g.*, *United States v. Nashawaty*, 571 F.2d 71 (1 Cir. 1978) (paint shop); *United States v. Sweet*, 548 F.2d 198, 202 (7 Cir. 1977) (tavern); *United States v. Schwanke*, 598 F.2d 575, 578 (10 Cir. 1979) (cafe); *United States v. Corbo*, 555 F.2d 1279, 1282 (5 Cir. 1977) (bookstore); *United States v. Keen*, 508 F.2d 986, 990 (9 Cir. 1974) (commercial fishing boat).

Copies of the *Mennuti* and *Monholland* decisions are attached for the Court's enlightenment. We commend Judge Friendly's opinion in *Mennuti* as a superb opinion, both for its end result and the analytical reasoning leading thereto.

The legislative history of the statute, as explicated by Judge Friendly, contains the telling phrase:

"[T]his is a very broad provision covering substantially all *business property*." [1970] U.S. Code Cong & Adm. News, 4007, at 4046, House Report No. 91-1549, Organized Crime Control Act of 1970, quoted in *Mennuti, supra*, 639 F.2d at 111. (Emphasis added.)

The government's position in the instant case—that is, that federal jurisdiction exists because gas from interstate commerce was used to heat the premises—is not well taken. That same position was expressly rejected in *Mennuti*, where the government's offer of proof included that "telephone lines, electric lines and other services provided at . . . [the residence] traveled in interstate commerce and affected interstate commerce." 639 F.2d at 108-09, fn. 1, par. 5. Rejecting this, the Second Circuit held:

"[A] residence is not used in interstate or foreign commerce simply because . . . it received electric power and telephone service from companies engaging in or affecting commerce . . ." *Id.* at 110.

Accord, Barton's analysis of *Mennuti, supra*, that the statute:

"does not apply to private dwellings, *notwithstanding* several interstate contacts involving . . . *fueling*." 647 F.2d at 232, fn. 8. (Emphasis added.)

See also *Monholland, supra*. These authorities should suffice to defeat the government's claim.

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CONCLUSION

The statute does not cover dwellings; it only applies to commercial property. Since here, a residential building is involved which was not used in any manner for commercial activities, the indictment should be dismissed.

Respectfully submitted,

JULIUS LUCIUS ECHELES
Attorney for Defendant

(CERTIFICATE OF SERVICE OMITTED IN PRINTING.)

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA,	}	No. 83 CR 114
<i>Plaintiff,</i>		
v.		
ROBERT RUSSELL,		
<i>Defendant</i>		

MEMORANDUM OPINION AND ORDER

SUSAN GETZENDANNER, District Judge:

Defendant Robert Russell moves to dismiss the one-count indictment pending against him for failure to allege a crime punishable under the federal arson statute, 18 U.S.C. § 844(i). On the basis of the facts stated in the Government's responsive memorandum (construed as an offer of proof), this motion is denied.

The Government hopes to prove at trial that Russell maliciously attempted to damage or destroy, by means of fire or explosive, a two-unit apartment building situated at 4530 South Union Street in Chicago. The Government further hopes to establish that Russell resides at 11361 South Lawndale in Chicago, and that he owns the property at 4530 South Union for the purpose of renting it to the public. Evidence will apparently also be tendered that Russell owns at least three other rental properties, which, in combination with the South Union building, house numerous tenants who together pay the defendant approximately \$1,900 a month in rent.

As to the property on South Union Street, the Government plans to show that at the time of the alleged acts, one unit of the building was rented to a family not related to Russell. The rent

charged was \$225 a month. Apparently, the second unit was unoccupied. Natural gas originating in states other than Illinois was used to heat the premises at the time of the alleged incident.

The pertinent federal statute, 18 U.S.C. § 844(i), seeks to punish "[w]hoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce." The Government contends that by proving the facts outlined above it will have shown that Russell "attempt[ed] to damage or destroy, by means of fire or an explosive, any building . . . used in . . . any activity affecting interstate or foreign commerce." Russell responds that since the subject premises were not used for "commercial" purposes, the necessary connection to interstate commerce cannot be shown.

The jurisdictional portion of the statute relied upon in the indictment plainly obligates the Government to prove three facts: first, that the attempted arson pertained to "any building"; second, that an "activity affecting interstate or foreign commerce" existed; and third, that the subject building was "used in" that activity. The Government's proposed proof addresses each of these factors.

The property at 4530 South Union clearly falls within the "any building" category. Further, the creation of heat from natural gas originating out of state is an "activity affecting interstate or foreign commerce." Such activity, moreover, is one in which the building at issue was unquestionably "used." The Government's proposed proof thus appears to satisfy the statute's literal terms. See *United States v. Barton*, 647 F.2d 224, 231-32 (2d Cir.), cert. denied, 102 S.Ct. 307 (1981) (approving a jury instruction that "[a] building is used . . . in an activity [a]ffecting interstate commerce . . . if oil or gas moving in interstate commerce is used to heat the building.");

United States v. Zabic, No. 82 CR 423, slip op. at 3 (N.D.Ill. Feb. 11, 1983) ("the activity of letting 43 units of dwelling space, including the provision of natural gas to each unit . . . is an activity affecting commerce")¹ Much lesser showings have passed muster. See *United States v. Grossman*, 608 F.2d 534 (4th Cir. 1979).

The court recognizes that the reasoning espoused above could have very broad application. *But see* note 2, *infra*, and accompanying text. However, the Seventh Circuit has clearly authorized expansive interpretations of the language of § 844(i). See *United States v. Sweet*, 548 F.2d 198, 201 (7th cir.), *cert. denied*, 430 U.S. 969 (1977) (suggesting that the statute reaches the bombing of a tavern selling only home-produced liquor products because such activity reduces the demand for liquor goods sold in interstate commerce). Congress enacted § 844(i)—as well the remaining provisions of Title XI of the Organized Crime Control Act of 1970—"to protect interstate and foreign commerce against interference

¹ Thus, defendant's reliance upon *United States v. Monholland*, 607 F.2d 1311 (10th Cir. 1979), is misplaced. In *Monholland*, the Court refused to find that § 844(i) criminalized the bombing of a pick-up truck driven to work by a state court judge. The Government argued that the judge's business activities affected interstate commerce, and that he "used" his truck in his work routine. The Court was not persuaded:

We say, then, that the truck is wholly immaterial as far as any commerce is concerned even if we assume that there is a commerce quality about what the judge does after he gets to court. . . . Since [the truck] is divorced from the activity carried on in court, there is no legal relationship whereby one can say that the truck affects commerce. . . . Our view has to be that, in law, the activity of the judge at the courthouse is remote from the use of the truck.

Id. at 1316. In this case, by contrast, it can hardly be said that the building in question is "divorced" or "remote" from the activities affecting interstate commerce.

and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials." 18 U.S.C.A. § 841 note. The construction of the statute adopted here furthers this purpose.

Russell cites in response the Second Circuit's holding in *United States v. Mennuti*, 639 F.2d 107 (2d Cir. 1981), that the statute "does not apply to private dwellings." *United States v. Barton*, *supra*, 647 F.2d at 232 n.8; *accord*, *United States v. Giordano*, 693 F.2d 245, 250 (2d Cir. 1982). The court declines to rule in Russell's favor on the strength of *Mennuti* for several reasons. First, *Mennuti* does not announce the law of this Circuit; *Sweet* does, and, for the reasons given above, the reasoning found in that opinion, to the extent it is relevant at all, supports the Government's position, not Russell's.

Mennuti must also be read in context. The *Barton* Court's subsequent approval of the jury instruction quoted *supra* clearly shows that the Second Circuit agrees, as a general matter, that a building heated by out of state gas is thereby "used in" an "activity affecting interstate or foreign commerce" for purposes of the statute. *Mennuti* simply carves a "residential building" exception to this general rule. The statute, however, speaks of "any building," not "non-residential buildings." It should go without saying that the words of the statute must, if at all possible, be given their ordinary meaning. *See, e.g., United States v. Turkette*, 452 U.S. 576 (1981); *see also United States v. Fears*, 450 F.Supp. 249, 253 (E.D.Tenn. 1978) (the term "any building" in 18 U.S.C. § 844(e) means *any* building, including a personal residence) (emphasis in original).

It is acknowledged that the House report underlying § 844(i), though ambiguous, can be read to limit the statute's reach to "business property":

Section 844(i) proscribes the malicious damaging or destroying, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or

foreign commerce or in any activity affecting interstate or foreign commerce. Attempts would also be covered. Since the term affecting [interstate or foreign] "commerce" represents "the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause," *NLRB v. Reliance Fuel Corp.*, 371 U.S. 224, 83 S.Ct. 312, 9 L.Ed.2d 279 (1963), this is a very broad provision covering substantially all business property

H.R. Rep. 91-1549, 91st Cong., 2d Sess. *reprinted in* [1970] U.S. Code Cong. & Admin. News 4046. But even conceding the propriety of the suggested limitation,² Russell's case is not advanced. For if the Government's proposed proof materializes, the evidence will show that Russell utilized the subject property in conducting his "side" business³ of providing housing space for rent. From the perspective of the defendant, the building on South Union Street was very definitely "business

² It should be stressed that the court's "concession" is made solely for purposes of discussion. The House Report's specific mention of "business property" does not necessarily carry with it the negative pregnant that all other property falls beyond the statute's reach. Indeed, evidence that such an inference should not be drawn is found in the immediately preceding statement in the Report that Congress meant to exercise its full power under the commerce clause. But in light of the precise facts presented herein, there is no need for the court to pursue this line of thought to its furthest reach. The court expresses no opinion as to whether § 844(i) criminalizes the bombing of an *owner-occupied* dwelling heated by out of state gas.

³ According to the Government's brief, "[t]he defendant is a 17 year veteran of the Chicago Fire Department."

property" within the meaning of the House Report cited above.⁴

For all the reasons stated, defendant's motion to dismiss the indictment is denied.

It is so ordered.

/s/ Susan Getzendanner
Susan Getzendanner
United States District Judge

April 25, 1983

⁴ The court recognizes that one of the buildings bombed in *Mennuti* was held out for rent, and that this factor was deemed irrelevant. With respect, this court does not find the reasoning of either the District Court (487 F.Supp. at 544 n.7) or the Court of Appeals (639 F.2d at 110) in *Mennuti* persuasive on this point.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

ROBERT RUSSELL,

Defendant.

No. 83 CR 114

MEMORANDUM OPINION AND ORDER

SUSAN GETZENDANNER, District Judge:

At the close of the government's proof and at the close of all of the evidence, the defendant moved for judgment of acquittal. First, defendant argues that the evidence does not establish the elements with respect to "attempt." The defendant is charged with attempting to damage and destroy 4530 South Union by means of fire and an explosive.

The government's discussion of the law of attempt accurately sets forth the law applicable to this case. On February 8th the defendant attempted to burn down the building by instructing Ralph Branch to burn down the building, by further instructing him on how to burn down the building and by Ralph Branch's actions in setting on fire a piece of wood close to the main beam supporting the building.

The defendant argues that Branch's conduct was not an attempt because Branch lacked intent to damage and destroy the building and his actual efforts to that end were a mere token gesture. Although Branch did testify that he did not think the building would burn, he in fact left an unattended fire in the basement of the building which clearly could have caused a major fire, and he returned later in the evening to see if the fire

had caught in order to warn the occupants of the building of the fire.¹ The facts belie Branch's self-serving testimony that he did not intend to start the fire.

The next attempt by the defendant to destroy the building was an attempt by means of an explosive. This occurred the next day. That defendant attempted to destroy the building by means of an explosive is established by the fact that he instructed Branch to use gasoline, and the defendant in fact purchased five gallons of gasoline and placed it in the basement of the building. This conduct constitutes attempt. The defendant arranged for an alibi for the time he instructed Branch to burn the building.

The defendant's criminal intent to destroy and damage the building as discussed above is fully and conclusively proved by the recording of his telephone conversation with Branch.

Next defendant argues that the requisite interstate commerce impact has not been proven in this case. The court has already ruled that a two-flat building owned as investment property and rented to others which uses interstate gas satisfies the interstate commerce requirement of the statute. The defendant now relies on the evidence that only a very small amount of gas was furnished to the building and that it is possible that the gas furnished to the premises was manufactured within Illinois. These arguments are rejected. The Peoples Gas witnesses testified that 97% of the gas sold to consumers in the City of Chicago was interstate gas. Although

¹ The defendant asserts that after leaving the building, Branch went across the street to observe the building and warn the residents if the fire actually caught. The government asserts that Branch left the building and walked a few blocks before returning to the building to see if the fire had caught. The court's own recollection of the testimony is that Branch left the building, went to a tavern and consumed two six-packs of beer before returning to the building. If the court's recollection is correct, Branch's asserted concern for the occupants of the building seems a mere afterthought.

they did not break down what portion of the gas bill generated by the use of gas at the building was attributed to Peoples Gas's overhead versus its actual purchase price for the interstate gas, I find this irrelevant to the interstate commerce analysis.

Accordingly, the court finds that the government has proved the defendant guilty as charged in the indictment beyond a reasonable doubt, and denies defendant's motion for judgment of acquittal at the close of the government's evidence and the close of all of the evidence. Judgment of guilty on each count of the indictment is entered against the defendant. Sentencing is set for August 23, 1983, at 9:30 a.m.

/s/ SUSAN GETZENDANNER

Susan Getzendanner

United States District Judge

Page of Record

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**BETTY STEPHENS,
GOVERNMENT'S WITNESS, SWORN**

DIRECT EXAMINATION BY MS. GIACCHETTI:

Q State your name and spell it for the Court Reporter.

A Betty Stephens, S-t-e-p-h-e-n-s.

Q And what city do you live in, Miss Stephens?

A Chicago, Illinois.

Q Did you ever live at the location of 4530 South Union in Chicago?

A Yes, ma'am.

Q When did you live there?

A From September of '82 to May of '83.

Q And who did you live there with?

A My husband and six children.

Q What is your husband's name?

* * *

[100] if I could see the place. He took me up and showed it to me. And then it was Robert Russell; he rented me the place.

Q Okay. Was that the man sitting on the porch, was Robert Russell?

A Yes, ma'am.

Q Looking around the courtroom today, is Robert Russell in the courtroom?

A Yes, ma'am.

MR. ECHELES: We will stipulate she has identified Robert Russell.

THE COURT: Thank you.

MS. GIACCHETTI: Thank you.

BY MS. GIACCHETTI:

Q And which of the apartments at 4530 South Union did you rent?

A Second-to-the-front. Well, though, it went all the way through.

Q How much did you pay?

A \$225 a month.

Q And in what form did you pay Robert Russell?

A In a check.

Q Okay. What check—what bank was your check written on?

A From Winter Haven, Florida; Exchange Bank.

Q Now, New, did there ever come a time when you had a discus-

* * *

[103] now that the prosecutor has told the witness.

THE COURT: Yes.

MR. ECHELES: There is nothing I can do about it, but I still object and move it be stricken.

THE COURT: Your objection is noted. I won't strike it, but, Miss Giacchetti, please refrain from leading the witness.

BY MS. GIACCHETTI:

Q How was your apartment heated?

A With natural gas..

Q What did you use as cooking fuel?

A Natural gas.

Q Okay. Did you have any other appliances in your apartment?

A The space — a space heater, and a gas dryer.

Q And what did those use as fuel?

A Pardon me?

Q What kind of fuel did those appliances use?

A Natural gas.

Q Okay. How was your water heated?

A Through natural gas.

Q Where did you get your natural gas?

A People's Gas.

Q Approximately what period of time you have--did you receive natural gas from People's Gas?

* * *

[121] Customer Relations.

Q Now, during your employment at People's Gas, have you become familiar with the procedure used to supply natural gas or supply gas to the City of Chicago?

A Yes, I have.

Q And where does that—what type of gas is supplied to the City of Chicago?

A Well, 97—approximately 97 percent of our supplied to the City is natural gas from wells in Texas, Oklahoma, Louisiana, and off the Gulf of Mexico—or, off the coast in the Gulf of Mexico.

Q Okay. And what is the other 3 percent?

A That is our synthetic natural gas that we produce near Joliet where we take ethane by pipeline from Kansas and convert it into methane and commingle it with our natural gas supply coming into the City of Chicago.

Q Now, how does—you said the natural gas comes from what two locations?

A Well, we have—there are two areas that our pipeline suppliers have gas wells that they supply the City. One is what we call the Amarillo area in Texas, and that—those pipelines come through Texas, Oklahoma, Kansas, Nebraska, Iowa, Illinois and then into the Chicago area.

The other area is Louisiana, Southeastern Texas area where the gas comes through Arkansas, Missouri,

* * *

[153] THE COURT: We will admit that, and I have corrected my copy.

(The exhibits are received in evidence.)

THE COURT: All right. Page 10?

MR. ECHELES: I object. It has to do with an insurance policy on an address that is not the address of the property in question.

MS. GIACCHETTI: Judge, the next three stipulations deal with insurance policies, and basically they are being offered — the insurance policies on 4530 and the other three pieces of what we have characterized as commercial or business property are covered by standard fire policies that are issued for business or commercial property as distinguished from policies — homeowner's policies issued to a residence, and so that is the purpose of offering those policies, is again that it is a business as opposed to a residence and is operated as such by the defendant.

MR. ECHELES: Those are Pages 10, 11 and 12, your Honor. We object.

THE COURT: But if they are offered only for that limited purpose of showing that those other properties were in fact treated as business properties by the defendant, I will admit them for that limited purpose, over the objection of the defendant.

(Stipulation Pages 10, 11 and 12 are received in evidence.)

MS. GIACCHETTI: Okay. And then with those we of course move 15, 16, 17, 18, 19, 21-A and 21-B, as referred to in those stipulations.

MR. ECHELES: Those are the insurance policies themselves.

[Page 11 of Government's proffered stipulations.]

If called to testify under oath, T. L. Derrick would testify as follows:

1. He is Underwriting Division Manager for Allstate Insurance Company, an insurance company located at 7770 Frontage Road, Skokie, Illinois 60077.

2. Allstate Insurance provides insurance coverage for the defendant Robert Russell for the premises located at 4530 South Union, Chicago, Illinois; 4600 South Union, Chicago, Illinois; and 11361 South Lawndale, Chicago, Illinois.

3. Government Exhibits 17 and 18 are fire insurance policies covering 4530 South Union, Chicago, Illinois, and 4600 South Union, Chicago, Illinois. These policies cover tenant occupied properties for fire damage only. Government Exhibit 19 is a homeowners policy for 11361 South Lawndale, Chicago, Illinois. This policy covers the property that is used as a residence by the defendant Robert Russell.

4. Allstate as a matter of policy differentiates between owner occupied property and rental property.

5. Government Exhibits 17, 18 and 19 are business records of Standard Service Corporation and are admissible into evidence under Rule 803(6) of the Federal Rules of Evidence.